IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WA.No. 752 of 2007()

AGAINST THE JUDGEMENT IN OP.3265/1999 Dated 09/01/2007
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APPELLANT/PETITIONER:

K.P.MAHESH KUMAR,
AGED 54, CIRCLE INSPECTOR OF POLICE,
S/O.K.N.PEETHAMBARAN, TC.NO.17/1548(4),
CHENKALLOOR, POOJAPPURA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.S.V.RAJAN
SRI.S.ARUN RAJ

RESPONDENTS/RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVT.,
KERALA STATE SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DEPARTMENTAL PROMOTION COMMITTEE
(LOWER) FOR KERALA, POLICE DEPARTMENT,
REPRESENTED BY ITS CONVENER, THE DIRECTOR
GENERAL OF POLICE, KERALA STATE,
THIRUVANANTHAPURAM.

3. THE DIRECTOR GENERAL OF POLICE,
KERALA STATE, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI SANDESH RAJA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC,JJ.

W.A.NO.752 OF 2007

Dated this the 29th day of March, 2007

JUDGMENT

Raman,J.

Appellant, who is the petitioner in O.P.No.3265/2007, has approached this Court, as he was not included in the list for promotion as Circle Inspector by the Departmental Promotion Committee, which met on 7/2/1996 and 12/2/1996. He was a Sub Inspector of Police and his next promotion is to the post of Circle Inspector. During three years preceding he was imposed a punishment of barring increments without cumulative effect. His contention was that since the withholding of promotion itself is one of the punishment, which could be imposed, which however was not awarded to him, the non-inclusion of his name in the list for promotion, after the award of punishment of barring the increment, is therefore not just and proper. The learned Single judge however did not accept this contention. The learned Single Judge found that even when no punishment of withholding of promotion has been imposed on an incumbent, the question as to whether he is suitable for promotion is to be decided taking into account the punishment imposed on him during the three years prior to the date, when the Departmental Promotion Committee considered the case

of the incumbent. Aggrieved thereby this appeal is preferred.

2. The learned counsel for the appellant reiterated the submission. The learned Government Pleader brought to our notice that as per Note (ii) of Rule 28 (7) of Part II of the Kerala State and Subordinate Service Rules, there is a clear indication that the if the officers are not fully exonerated of the charges, then only the Departmental Promotion Committee could decide each case on its own merit. In other words, if the officer is not exonerated, against whom a minor punishment was imposed, necessarily this also has to be taken into consideration in deciding as to whether he should be included for promotion. The Departmental Promotion Committee having considered his case and did not include his name for promotion obviously for the reason that he was already imposed punishment during the period under consideration, we do not find any reason to interfere with the judgment of the learned Single Judge, as the view taken by the learned Single Judge is a plausible one.

Appeal is dismissed.

P.R.RAMAN,
Judge.

ANTONY DOMINIC,
Judge.

kcv.